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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

S.K.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS  
COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Real Party in Interest.

F074281

(Super. Ct. No. 517493)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDING; petition for extraordinary writ review. Ann Q.  
Ameral, Judge.

Nadine Salim, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County  
Counsel, for Real Party in Interest.

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\* Before Gomes, Acting P.J., Kane, J. and Smith, J.

S.K. (father) seeks an extraordinary writ from the juvenile court's orders issued at a contested 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f))<sup>1</sup> terminating his reunification services and setting a section 366.26 hearing as to his now 23-month-old son, T.K. Father contends the juvenile court erred in finding he was provided reasonable reunification services. We grant the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

Dependency proceedings were initiated in June 2015 in Alameda County when then five-month-old T.K. was taken into protective custody by the Hayward Police. Father and Kayla S., T.K.'s mother,<sup>2</sup> were seen fighting in the car. When they were pulled over, the police discovered Kayla did not have a driver's license, and she and father were living in the car and in violation of a restraining order. Kayla was arrested on various charges and father was taken to a psychiatric hospital because he was suicidal. T.K. was placed in a foster home in Alameda County where he would remain.

The Alameda County Juvenile Court adjudged T.K. a dependent child after sustaining allegations that Kayla and father engaged in physical and verbal altercations in T.K.'s presence, and that Kayla suffers from chronic mental health problems that required medical and therapeutic treatment. She exhibited explosive behavior that was physically aggressive in nature and was unable to regulate her emotions. The petition further alleged that father suffered from mental health symptoms that required two psychiatric hospitalizations and that he stopped taking medication prescribed by a psychiatrist. The petition also alleged that the parents lacked reliable housing and had been recently discharged from a transitional housing program.

The Alameda County Juvenile Court ordered T.K. removed from parental custody and ordered Kayla and father to participate in reunification services. Father's services

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Kayla did not file a writ petition.

plan required him to complete a 26-week domestic violence program, a parenting program, and psychological and psychotropic medication evaluations and engage in individual counseling. The court also ordered weekly supervised visitation.

By the six-month review hearing in December 2015, father and Kayla had separately moved to Modesto in Stanislaus County and Kayla had a new boyfriend. Father was living in a homeless shelter, working part time and trying to save money so he could obtain his own housing. He and Kayla were partially compliant with their case plans. Father had completed an intake appointment in late September for parenting and domestic violence classes. He also completed an intake appointment for individual therapy but had to complete parenting classes before being assigned an individual counselor. In addition, father was under a physician's treatment for depression and anxiety and regularly visited T.K.

In January 2016, the Alameda County Juvenile Court continued reunification services for both parents and transferred the case to Stanislaus County.

In February 2016, the Stanislaus County Juvenile Court (juvenile court) accepted the case from Alameda County. By that time, father had relocated to Fresno. The juvenile court approved an updated reunification case plan for father and Kayla and scheduled a 12-month review hearing for June 2016. Father's case plan required him to complete a 52-week domestic violence program<sup>3</sup> offered at Comprehensive Counseling Services (CCS) in Fresno or another program approved of by the social worker, complete assessments for mental health services and psychotropic medication and complete a psychological evaluation to determine if he suffered from a mental disability that

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<sup>3</sup> We find it curious that six months into the reunification process Stanislaus County required father to complete a 52-week domestic violence program when Alameda County only required him to complete a 26-week program. However, neither father nor his attorney objected to this additional requirement.

rendered him incapable of utilizing services. The plan also required father to participate in weekly supervised two-hour visits with T.K.

In its transfer report, filed in February 2016, the Stanislaus County Community Services Agency (agency) informed the juvenile court that a social worker from Alameda County had given father a list of service providers in Fresno County but that he had not contacted any of them. In addition, Leticia Reyes, a Stanislaus County social worker, referred father to CCS for domestic violence and parenting education after obtaining information about their services and submitted a contract for payment of those services.

Sometime in February to mid-March 2016, for reasons not explained in the record, the agency initiated a services contract with the Marjaree Mason Center for domestic violence and parenting services. The contract was finalized sometime the following July. Meanwhile, father was unable to participate in those aspects of his case plan. In addition, he had not completed a psychological evaluation though one was scheduled for him in July 2016.

In its report for the 12-month review hearing, the agency recommended the juvenile court terminate Kayla's reunification services because a psychologist had determined she had a mental disorder that prevented her from utilizing reunification services. The agency recommended the court continue services for father in light of the delay in securing services for him. However, the agency was not convinced he was interested in reunifying with T.K. given his sporadic visitation. According to the agency, father attended four visits and missed 13 from February 23, 2016 to June 21, 2016.

In an addendum report filed in July 2016, the agency informed the court that social worker Pamela Werb attempted unsuccessfully to contact father on July 18, 2016 by telephone to provide him contact information to initiate parenting and domestic violence services. She provided him the information in a letter dated the following day. She also advised him that the psychologist was willing to reschedule his psychological evaluation

since he had failed to keep his appointment. She also reminded father that he had not visited T.K. since May 3 and reiterated the need to contact her in advance so that she could arrange his transportation. The agency also attached a list of 11 agencies Werb contacted in an effort to obtain parenting and domestic violence services for father, as well as an e-mail to his attorney attempting to enlist her assistance.

On August 16, 2016, the juvenile court conducted a contested 12-month review hearing. County counsel made an offer of proof that, if called, Ms. Werb would testify that father missed his second psychological evaluation, claiming that his father died. Werb was not able to verify the information but accepted it at face value and scheduled a third evaluation for him. In addition, father did not visit T.K. in July but visited him on August 2 and then missed their August 9 visit. Father also missed an appointment with the Marjaree Mason Center on August 11. The court accepted the offer of proof.

Minor's counsel objected to the agency's recommendation to continue father's reunification services, arguing the agency's efforts to assist father were reasonable but that he failed to follow through. She stated, "[I]t appears the social worker has made more effort in trying to reunify the child with the father than the father has."

Father's attorney argued the agency's delay in securing domestic violence and parenting classes through the Marjaree Mason Center constituted a failure to provide reasonable reunification services. Father's attorney conceded that Fresno and not Stanislaus County was responsible for the delay but argued that the agency, as the "agency at large," had the ultimate responsibility and failed to meet it.

The juvenile court found the agency provided father reasonable reunification services even though the contract with the Marjaree Mason Center took an "inordinate" amount of time to finalize. The court stated that the agency "bent over backwards" to arrange a psychological evaluation for father but he failed to meet with the psychologist.

More important to the court, however, was father's failure to regularly visit and maintain contact with T.K. The court stated,

“[I]f [father] was regularly visiting and maintaining contact, and at least engaging in some of his services, the [c]ourt could certainly see why services should be extended to the 18-month [hearing]. But given the fact that he has not regularly and consistently visited, and he's not made any type of substantive progress with regard to the services which have been made available, the [c]ourt sees no reason to continue reunification services to [father] at this time.”

The court terminated father and Kayla's reunification services and set a section 366.26 hearing.

### **DISCUSSION**

Father contends the agency was unreasonable in relying solely on the Marjaree Mason Center to provide him domestic violence and parenting services. The agency should have pursued other service providers, he argues, when it encountered a delay in procuring those services. The agency's failure to do so, father further contends, resulted in the agency providing him merely a psychological evaluation and failing in its duty to provide him reasonable reunification services. Therefore, the juvenile court erred in finding services were reasonable and must vacate its orders terminating reunification services and setting a section 366.26 hearing. We agree.

The purpose of reunification services is to place the parent in a position to gain custody of the child. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244.) To that end, the agency must devise a services plan tailored to the unique needs of the family and make a good faith effort to help the parent access those services. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) “The ‘adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case.’ [Citation.] To support a finding reasonable services were offered or provided, ‘the record should show that the supervising agency identified the problems leading to the loss of

custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult .... [Citation] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ ” (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426.)

On a challenge to the juvenile court’s reasonable services finding, appellant bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) We review the court’s finding under the substantial evidence test. In so doing, we view the evidence in a light most favorable to the court, indulging in all reasonable and legitimate inferences to uphold the judgment. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

In light of the allegations of the petition, the agency adopted a reunification plan for father directed primarily at domestic violence and mental health services. However, the agency was unable to provide father domestic violence services. Despite that, the juvenile court found the agency provided father reasonable reunification services in essence because he failed to take advantage of services offered to him, notably a psychological evaluation and visitation. However, a parent’s compliance and frequency of visitation are not considerations with respect to the reasonableness of services provided. Rather, as we stated above, whether services are reasonable depends on the nature of the services offered or provided and the agency’s efforts in helping the parent access them.<sup>4</sup>

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<sup>4</sup> Parental compliance and visitation implicate other required findings (i.e., detrimental return and substantial probability of return). (§ 366.21, subs. (f)(1)(B) & (g)(1).)

In this case, we conclude substantial evidence does not support the juvenile court's reasonable services finding for several reasons. Domestic violence was one of the primary reasons T.K. was removed from father's custody. Thus, it was a critical component of father's services plan. Through no fault of his own, he was unable to participate in it. Without it, he had no chance of reunifying with his son. Further, the agency pursued Marjaree Mason Center as the sole provider of domestic violence services even though there is evidence the service was available from other sources. For example, according to the record, CCS provided domestic violence services. It was identified by the agency as the required provider in father's services plan and the social worker issued father a referral to CCS after verifying the service was offered there. Why the agency subsequently redirected its procurement efforts toward the Marjaree Mason Center is not explained by the record. It could be that the agency was not authorized to refer directly to CCS and had to contract for the service. Perhaps only Marjaree Mason Center met the contract requirements. In any event, the evidence on the record presents CCS as an alternative provider for domestic violence services.

There is also evidence of another service provider for domestic violence, albeit not a convenient one. Among the contacts Werb provided father in July 2016 was a four-month domestic violence program in the town of Huron which, according to Werb, was an hour and 15 minutes from Fresno. Werb noted the next class would convene in September 2016. Yet, there is no explanation in the record as to why Werb did not pursue this program earlier. Presumably, it was because of the distance and because she believed a contract with Marjaree Mason Center was imminent. In any case, the record reflects two possible domestic violence providers (i.e., CCS and the program in Huron) that the agency did not pursue. Its failure to do so, in our view, was unreasonable.

We thus conclude the juvenile court erred in finding father was provided reasonable reunification services. We do so acknowledging the agency cannot control



the availability of specific services. Nevertheless, the agency still has a duty to assist the parent in the reunification process. It is, after all, the agency that develops the specific case plan requirements that, if adopted by the juvenile court, become court orders. It is therefore incumbent on the agency to select services that meet the parent's needs and that are available in a timely manner. Otherwise, the services plan is inherently inconsistent and sets the parent up for failure. Further, if the agency discovers that a court-ordered service plan cannot be implemented because a service cannot be provided, it is incumbent upon the agency to seek an appropriate modification.

We therefore grant the petition and direct the juvenile court to provide father an additional six months of reunification services. In so doing, we are mindful that our decision effectively continues this case to a 24-month review hearing, well beyond the 18 months allowable by statute. What that means simply is that father only has six months to reunify with T.K. or the juvenile court will likely set a section 366.26 hearing. (§ 366.25, subd. (a)(3).) Consequently, it is in his interest to participate in the development of the case plan and coordinate closely with the agency to comply with it.

### **DISPOSITION**

The petition for extraordinary writ is granted. The juvenile court is directed to vacate its finding that father was provided reasonable reunification services and its orders terminating his reunification services and setting a section 366.26 hearing. The court is further directed to enter a finding that he was not provided reasonable reunification services for six months and to enter an order continuing reunification services for him for six months. This opinion is final forthwith as to this court.